

NTSB Order No.
EM-116

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 16th day of November, 1984

JAMES S. GRACEY, Commandant, United States Coast Guard,

v.

RICHARD G. FIFER, II, Appellant.

Docket ME-103

ORDER DENYING RECONSIDERATION

By Order EM-111, served July 16, 1984 the Board affirmed a decision by the Commandant revoking appellant's merchant mariner's license for his conviction of a narcotic drug law violation in the state court. Appellant has filed a motion requesting that the Board reconsider its order.¹ As we find, for the reasons discussed below, that the motion fails to establish error in the Board's order or to otherwise warrant any change in our disposition of the matter, it will be denied.

In his motion appellant suggests that because "the Commandant and the Administrative Law Judge determined the penalty under an incorrect interpretation of law," namely, that 46 U.S.C. section 239b did not permit any sanction less than revocation, they "could well have determined that revocation was not an appropriate sanction" had the correct interpretation been followed. He accordingly asks that the Board remand the case to the Coast Guard so that the question of sanction can be considered in light of the "appropriate legal standard." We decline to do so.

In the first place, the Coast Guard has been aware of our interpretation that the statute does permit consideration of sanctions other than revocation for at least ten years, or since our decision in Commandant v. Moore, 2 NTSB 2709 (1974). Thus, a remand would not likely produce a different decision on sanction. Second, based on our independent review of the record on appeal, we concluded that revocation was not unwarranted for appellant's "direct and substantial involvement in an attempt to bring a large

¹The Coast Guard has filed a reply opposing reconsideration.

quantity [4900 lbs] of illicit narcotics into the country" (Order EM-111 at 3) and in effect that the purposes of the statute had been met notwithstanding the Coast Guard's failure to consider a sanction less than revocation. In light of those conclusions, not challenged in appellant's motion, we are not persuaded that our original order should be altered in any way.

ACCORDINGLY, IT IS ORDERED THAT:

The appellant's motion for reconsideration is denied.

BURNETT, Chairman, GOLDMAN, Vice Chairman, and Bursley, Members of the Board, concurred in the above order.